

108 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

Transwestern Pipeline Company

Docket No. CP04-104-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued August 5, 2004)

1. On April 8, 2004, Transwestern Pipeline Company (Transwestern) filed an application under sections 7(b) and (c) of the Natural Gas Act (NGA) for authority to abandon certain compression facilities and for a certificate of public convenience and necessity to construct, own, and operate pipeline, compression, and appurtenant facilities, designated as the San Juan 2005 Expansion Project, in New Mexico.
2. Approval of Transwestern's proposal will serve the public interest by allowing Transwestern to expand its system capacity to alleviate transportation and supply constraints and to enhance reliability and flexibility on its system. Accordingly, the Commission is granting Transwestern's requested authorizations, subject to the conditions herein.

Background and Proposal

3. Transwestern is a natural gas company subject to the jurisdiction of the Commission. Transwestern owns and operates a natural gas transmission system which provides access to natural gas supplies in the San Juan Basin in northwest New Mexico and southwest Colorado, the Texas-Oklahoma Panhandle and the Permian Basin region of West Texas.
4. Transwestern proposes to construct and operate the San Juan 2005 Expansion Project, consisting of approximately 72.6 miles of 36-inch pipeline looping on its existing San Juan Lateral in northwestern New Mexico. Transwestern also proposes to abandon compression facilities and to install additional compression facilities which will result in a net gain of 20,000 horsepower. Transwestern's San Juan 2005 Expansion Project proposal is designed to add 375,000 dekatherms per day (Dth/day) of firm transportation capacity to its system.

5. Under current operating conditions, Transwestern states that its San Juan Lateral is fully subscribed on a firm basis. Transwestern states that it is capable of serving all existing firm commitments but has been experiencing constraints in transportation capacity, limiting opportunities to serve incremental requirements of existing and potential shippers.

6. Transwestern states that it requires an additional 375,000 Dth/day capacity to gain access to both existing gas supplies from the Blanco Hub, as well as anticipated gas supplies from the Rockies and the San Juan Basin. Transwestern states that the proposed San Juan 2005 Expansion Project will add the capacity necessary to transport the gas to Transwestern's mainline for further delivery to downstream markets, thereby helping to alleviate constraints on capacity of the San Juan Lateral and enhance system reliability and flexibility.

Proposed Facilities

7. Specifically, Transwestern proposes to construct and operate approximately 63.3 miles of 36-inch pipeline loop between milepost 8.9 in San Juan County and milepost 71.9 in McKinley County, New Mexico, and approximately 9.3 miles of 36-inch diameter pipeline loop, terminating at Transwestern's Gallup Compressor Station, also in McKinley County. The proposal includes abandonment of a 7,000 horsepower motor and installation of a 15,000 horsepower unit and a 8,000 horsepower motor at the Bloomfield Compressor Station in San Juan County; abandonment of a 10,000 horsepower motor and installation of a 12,000 horsepower motor at the Bisti Compressor Station, in San Juan County; and abandonment of a compressor unit and installation of a new unit, with the existing motor rerated from 10,000 to 12,000 horsepower at the Gallup Compressor Station in McKinley County.

8. The San Juan Lateral extends from the LaPlata "A" Compressor Station in LaPlata County, Colorado, to a point on Transwestern's mainline near Gallup, New Mexico. Transwestern originally constructed the San Juan Lateral in 1991¹ and expanded its capacity several times between 1996 and 2002.² The compressor stations have similarly been modified over the years.

¹ Transwestern Pipeline Company, 56 FERC ¶ 61,196 (1991).

² Transwestern Pipeline Company, 75 FERC ¶ 61,107 (1996); 81 FERC ¶ 61,217 (1997), *order granting clarification*, 82 FERC ¶ 61,164 (1998); 90 FERC ¶61,032 (2000); 99 FERC ¶ 62,050 (2002).

9. The estimated cost of the expansion project is \$138.4 million. Transwestern proposes to place the facilities in service in June 2005.

Markets

10. As a result of an open season held on February 20 through March 14, 2003, Transwestern has binding precedent agreements with five shippers subscribing to 300,000 Dth/day out of the total of 375,000 Dth/day of additional capacity that would be created by the project.³ The term for each agreement is ten years from the in-service date of the San Juan 2005 Expansion Project. During the open season, Transwestern received no requests to turn back capacity on the San Juan Lateral.

Rates

Recourse Rates – Rate Schedule FTS-4

11. For shippers that do not enter into negotiated rate agreements for service using the additional capacity that will be created by looping the San Juan Lateral, Transwestern proposes a new Rate Schedule FTS-4 setting forth initial recourse rates. The recourse rates are incremental rates for service under Transwestern's Part 284 blanket certificate and are based on an average three-year cost of service methodology using a 35-year life for the expansion facilities.

12. A shipper may contract under Rate Schedule FTS-4 for lateral service only to use the expansion capacity to move gas supplies to the Thoreau point, where the lateral interconnects with the mainline. A shipper also may contract under Rate Schedule FTS-4 for service at the respective recourse rates for service that will use the lateral's expansion capacity and mainline capacity to deliver gas to points east or west of the Thoreau point on the mainline.

13. Under Rate Schedule FTS-4, the recourse rate's reservation charge for lateral service only to the Thoreau point is \$0.1746/Dth. For lateral and mainline service to delivery points east of the Thoreau point, Rate Schedule FTS-4's reservation charge of \$0.2782 is derived by adding the FTS-4 reservation charge for lateral expansion capacity

³ The five shippers are BP Energy Company (100,000 Dth/day), ConocoPhillips Company (100,000 Dth/day), Burlington Resources Trading, Inc. (50,000 Dth/day), Red Willow Production Company (25,000 Dth/day), and SG Interests (25,000 Dth/day).

to Transwestern's recourse reservation charge under existing Rate Schedule FTS-1 for mainline service from the Thoreau point to points east. For service to delivery points west of the Thoreau point on the mainline, the Rate Schedule FTS-4 reservation charge of \$0.4401 is derived by adding the FTS-4 reservation charge for lateral expansion capacity to the existing FTS-1 reservation charge for mainline service from the Thoreau point to points west. Transwestern proposes that shippers receiving service under proposed Rate Schedule FTS-4 be subject to the same fuel percentage as FTS-1 shippers since the same gas compression facilities will be utilized for existing and expansion shippers.

Negotiated Rates

14. Transwestern states that shippers were given the option of paying the cost-based recourse rate or negotiated rates for service. Because shippers subscribing to firm capacity on the San Juan 2005 Expansion Project desired rate certainty, the shippers executed precedent agreements reflecting negotiated rates.

15. Specifically, the executed precedent agreements reflecting a fixed negotiated rate which, for the first three years of the contract is a reservation rate of \$0.2620/Dth/day. After the end of the first three years and continuing through the end of the primary term, the shippers will pay the maximum tariff rates and surcharges, subject to the rate not exceeding a negotiated maximum rate,⁴ applicable to the transportation service that are established in future rate proceedings. The applicable surcharges and the applicable fuel percentages shall be consistent with the tariff and the GRI surcharge will be \$0.0000.

16. Transwestern states that as specified in section 3.6 of rate Schedule FTS-1 of Transwestern's tariff, as incorporated in Rate Schedule FTS-4, it will reflect language stating that Transwestern will file at least one day prior to the commencement of negotiated transportation service tariff sheets, including information such as the name of the shipper, the rate, term, volume, and receipt/delivery points. Additionally, Transwestern will keep separate and identifiable accounts for any quantities transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates.

⁴ The Commission approved Transwestern's request to implement negotiated rate authority in Docket No. RP97-288-000, *et al.*, 79 FERC ¶ 61,021 (1997), *order on reh'g*, 79 FERC ¶ 61,310 (1997).

Rate of Return

17. Transwestern proposes a 9.5 percent total rate of return with a 6 percent cost of debt and a 13 percent return on equity with a capital structure of 50 percent debt to 50 percent equity.

Interventions

18. After due notice by publication in the *Federal Register* on April 21, 2004 (69 Fed. Reg. 21,521), 15 timely, unopposed motions to intervene were filed.⁵ The intervenors are listed in Appendix A to this order. One of the interventions included a protest filed by Southern California Gas Company (SoCal) on May 6, 2004, however, the protest was withdrawn on May 17, 2004.

Discussion

19. Since the application pertains to facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Transwestern's proposal is subject to the requirements of section 7 of the NGA.

Public Convenience and Necessity

20. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.⁶ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214.

⁶ Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement) 88 FERC ¶ 61,227 (1999), Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000).

by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

21. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the new construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

Subsidization

22. Where a pipeline proposes to charge an incremental rate for new construction, the project will not be subsidized by existing customers.⁷ In this proceeding, Transwestern proposes an incremental rate to cover the costs associated with the proposed facilities. Thus, the threshold requirement of no subsidization has been met.

Adverse Impacts

23. Once the Commission determines that a proposed project will not be subsidized by existing shippers under the certificate policy, the Commission considers the effects the project will have on the pipeline's existing shippers, competing pipelines and their captive customers, and the landowners and communities along the proposed route of the pipeline project. Here, the proposed project will have the beneficial effect of alleviating supply and transportation constraints on Transwestern's system without adverse impact on other pipelines or their captive customers. The incremental capacity will be available to both existing and potential shippers and will foster competition in the market. No other pipelines or their customers have objected to the proposal.

⁷ See, e.g., Transcontinental Gas Pipe Line Corporation, 100 FERC ¶ 61,311 (2002).

24. The proposal will have only minimal landowner impact. Construction of the pipeline looping will be within Transwestern's existing right-of-way for the existing San Juan Lateral. Installation of additional compression will be within existing compressor stations (with the exception of the need for an additional 3.5 acres at the Bisti Compressor Station, currently under lease with the Bureau of Land Management). Consequently, the proposal will have minimal effect on the environment.

25. Transwestern will require the use of additional land for access and storage of equipment for the construction. The total amount of land affected by the construction will be approximately 1,468 acres, with approximately 228 acres permanently affected by operation of facilities. The majority of the land traversed by the pipeline is within the boundaries of the Navajo Nation (administered by the Bureau of Indian Affairs), State of New Mexico lands and lands managed by the Bureau of Land Management. Only three tracts of land are owned by private landowners (two of these tracts are owned by El Paso Natural Gas Corporation). Transwestern is negotiating with each of these affected parties and attempting to come to agreements which avoid the need for eminent domain proceedings.

26. Based on the above considerations, the Commission concludes that Transwestern's proposed project can proceed without subsidies, will not adversely affect or degrade service to its existing customers, and will not harm existing pipelines or their captive customers. Transwestern has demonstrated a need for its project, having submitted binding precedent agreements for 300,000 Dth/day out of the 375,000 Dth/day for an initial term of ten years, demonstrating long-term commitment to the project.

27. Additionally, as noted above, the proposed looping of the San Juan Lateral will increase capacity and enhance reliability and flexibility for both accessing gas supply and transporting gas for both existing and potential shippers, alleviating both short-term transportation constraints and long-term supply constraints. The Commission, therefore, finds that the benefits of the proposed project outweigh the potential adverse effects on economic interests, as contemplated by the Policy Statement.

28. As is the Commission's practice, the certificate issued herein is conditioned on Transwestern's having executed contracts for the level of service and for the terms of service represented in the precedent agreements before commencing construction on the project.

Rates

29. After reviewing Transwestern's estimated cost of service and throughput, the Commission finds Transwestern's proposed initial incremental recourse rate for the incremental expansion capacity is appropriate. Transwestern is directed to file actual tariff sheets consistent with the *pro forma* tariff sheets thirty days prior to the commencement of service.

30. As noted above, Transwestern's existing precedent agreements with the five expansion shippers are negotiated rate agreements. Any service agreement signed with an expansion shipper containing a negotiated rate must comply with the Commission's decision in *NorAm Gas Transmission Company (NorAm)*⁸ and *Wyoming Interstate Company, Ltd. (WIC)*.⁹ Consistent with *NorAm* and *WIC*, Transwestern will be required to file either its negotiated rate contract or numbered tariff sheets 30 days prior to the commencement of service on the expansion project, stating for each shipper paying a negotiated rate the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported and a statement that the agreement conforms in all material respect with the *pro forma* service agreement in Transwestern's FERC Gas Tariff.¹⁰ Transwestern must also disclose all consideration linked to the agreements. In addition, Transwestern must maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 rate cases.

⁸ 75 FERC ¶ 61,076 (1996).

⁹ 107 FERC ¶ 61,124 (2004).

¹⁰ Under the Commission's current regulations, when a pipeline makes a filing to implement a negotiated contract purported to conform to the pipeline's form of service agreement in all material aspects, the pipeline is not required to file the contract. However, such a filing must contain a statement that the pipeline's filing complies with the requirements of 18 C.F.R. § 154.1(d) (2003). Violation of this regulation may result in the rejection of the filing or suspension of the pipeline's negotiated rate.

Engineering

31. Our review of Transwestern's proposal indicates that the expansion of the San Juan lateral has been properly designed to provide up to 375,000 Dth/day of incremental firm transportation by means of the proposed construction of pipeline facilities and the proposed changes to existing compression facilities.

Environmental

32. On December 24, 2003, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed San Juan 2005 Expansion Project and Request for Comments on Environmental Issues (NOI). We received three comment letters in response to the NOI, and our staff addressed all substantive comments in the environmental assessment (EA).

33. Our staff prepared an environmental assessment (EA) for Transwestern's proposal. The EA addresses geology, soils, water resources, vegetation, wildlife, fisheries, sensitive species, land use, cultural resources, air quality and noise, socioeconomics, reliability and safety, and alternatives.

34. On May 26, 2004, we issued a Notice of Availability (NOA) of the EA for the San Juan 2005 Expansion Project. In response to the NOA, we received comments from the New Mexico Department of Game and Fish (NMGF), New Mexico Environmental Department (NMED), and the U.S. Department of Interior (DOI). The environmental comments on the EA are discussed below.

35. NMGF commented that the EA's statement that Transwestern's proposed construction schedule is generally outside of migratory bird nesting periods is incorrect, as construction is expected to extend into June 2005. While this observation is true by itself, we also stated in the EA that there may be some overlap with the construction schedule if construction extends into a nesting season, Transwestern would establish appropriate no-construction zones around any active nests which are identified.

36. NMGF commented that the EA states the project sponsor is responsible for revegetating soils disturbed by the project-related activities and appears to make an exception for temporary workspace areas, stating they will be allowed to revert to pre-construction conditions. We clarify that Transwestern also will be responsible for revegetating temporary workspace areas along with the construction right-of-way. The statement in the EA was intended to mean that temporary workspace areas would be allowed after construction to revert to pre-construction *uses* as opposed to pre-construction conditions.

37. NMGF commented that topsoil stockpiling and decompaction should be required along the entire length of the right-of-way and not be limited to agricultural or residential locations. The Commission's Upland Erosion Control, Revegetation, and Maintenance Plan and Transwestern's Construction Stabilization and Restoration Plan (CSR) do not require this and without further justification why this would be needed, we disagree with this comment.

38. The NMGF commented that the analysis of noise has not been adequately addressed for the Bisti Compressor Station. The NMGF recommended that a post-project noise survey be required for the Bisti Compressor Station. As discussed in the EA, the projected Ldn noise level at the noise-sensitive area (about 3,000 feet) is well below Ldn of 55 dBA (the Commission's guideline limit for noise generated by any new or additional compressors). At the boundary of the Bisti Wilderness Area (about 3,500 feet), the projected Ldn noise level is below the Bureau of Land Management (BLM) stringent noise limit of 30.2 dBA (Ldn). For these reasons, we find that a post-project noise survey is not necessary.

39. The NMGF also commented that the use of the C-weighted scale instead of the A-weighted scale may be more appropriate for evaluating noise that would affect non-human receptors; The NMGF states that "even for human beings, in a recreational setting, low frequency noise, which is under-represented on the A-weighted scale, has been shown to cause stress reactions including raised blood pressure and increased muscle tension." The Commission's guideline for noise is based on the Environmental Protection Agency's (EPA) "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" (1974). This publication evaluates the effects of environmental noise with respect to health and safety. The document provides information for state and local governments to use in developing their ambient noise standards. The EPA has determined that in order to protect the public from outdoor activity interference and annoyance, noise levels should not exceed an Ldn of 55 dBA at residences. We have adopted this criterion which ensures that there will not be a significant impact on the human environment.

40. NMED commented concerning storm water management measures and hydrostatic testing. Specifically, NMED indicated that the Storm Water Pollution Prevention Plan developed by Transwestern may lack elements required to comply with the National Pollutant Discharge Elimination System permit. We note that Transwestern's plan includes by reference additional protective measures in accordance with Transwestern's Construction Stabilization and Restoration Plan, as well as the Commission staff's Wetland and Waterbody Construction and Mitigation Procedures. In any event, Transwestern will have to comply with any additional measures necessary to obtain the required permits.

41. The NMED also indicated that individual National Pollution Discharge Elimination System permits for hydrostatic testing would be required 180 days prior to discharge and that the EPA may be involved in review of the permit applications. As indicated in the EA, Transwestern will not be allowed to proceed with construction until the appropriate permits have been obtained. In addition, we have required that Transwestern finalize a hydrostatic testing plan in consultation with EPA, NMED, and the Navajo Nation EPA prior to construction.

42. DOI commented that the proposed study area may include recreational areas that were developed with assistance from the National Park Service's Land and Water Conservation Fund program. National Park Service records indicate there are numerous conservation fund projects in these counties. However, Transwestern has confirmed with the State of New Mexico that no fund properties would be affected by construction or operation of the proposed project.

43. Based on the discussion in the EA, the Commission finds that if the project is constructed in accordance with Transwestern's application and supplements filed, and subject to the conditions included in Appendix B attached hereto, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

44. Any state and local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹¹ Transwestern shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state or local agencies on the same day that such agency notifies Transwestern. Transwestern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

¹¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Transwestern Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

45. At a hearing held on July 28, 2004, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP04-104-000 authorizing Transwestern to construct and operate the facilities, as more fully described in the application and in the body of this order.

(B) The certificate authorized in Ordering Paragraph (A) above and the rights granted thereunder is conditioned upon Transwestern's compliance with all applicable Commission regulations under the NGA, particularly paragraphs (a), (c), (e), and (g) of section 157.20 and Parts 154 and 284 of such regulations.

(C) Transwestern's facilities must be constructed and made available for service by July 1, 2005, pursuant to paragraph (b) of section 157.20 of the Commission's regulations.

(D) The authorization issued in Ordering Paragraph (A) above is conditioned upon Transwestern's compliance with the environmental conditions set forth in Appendix B to this order. Transwestern shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transwestern. Transwestern shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(E) Transwestern must execute firm contracts equal to the level of service and the terms of service represented in its precedent agreements prior to commencing construction.

(F) Permission and approval to abandon the compression facilities, as more fully described in the application and in the body of this order, is granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix A
Interventions - Docket No. CP04-104-000

Agave Energy Corporation
Navajo Tribal Utility Authority
Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing
America, L.L.C.
UNS Gas, Inc.
El Paso Natural Gas Company
Public Service Company of New Mexico
Questar Southern Trails Pipeline Company
Cross Timbers Energy Services, Inc.
ConocoPhillips Company
BP America Production Company and BP Energy Company
Burlington Resources Trading Inc.
TransColorado Gas Transmission Company
Southwest Gas Corporation
Chevron Texaco Natural Gas, a division of Chevron U.S.A., Inc.
Southern California Gas Company

Appendix B Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. Transwestern shall follow the construction procedures and mitigation measures described in its application and as identified in the environmental assessment (EA), unless modified by this order. Transwestern must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. Prior to any construction, Transwestern shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location(s) shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, Transwestern shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station

positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transwestern's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. Transwestern's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transwestern shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP before construction in or near that area.

This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of this certificate and before construction begins, Transwestern shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Transwestern will implement the mitigation measures required by this order. Transwestern must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Transwestern will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Transwestern will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Transwestern's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Transwestern will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Transwestern shall employ at least one environmental inspector per construction spread. The environmental inspector(s) shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;

- d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Transwestern shall file updated status reports prepared by the (head) environmental inspector with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Transwestern from other federal, state or local permitting agencies concerning instances of noncompliance, and Transwestern's response.
9. Transwestern must receive written authorization from the Director of OEP before commencing service from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. Within 30 days of placing the certificated facilities in service, Transwestern shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Transwestern has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Transwestern finalize the Hydrostatic Testing Plan, in consultation with the NNEPA, NMED, and EPA Region 9, and file the final Hydrostatic Testing Plan and evidence of this consultation with the Secretary, for review and written approval of the Director of OEP, prior to construction.
12. Transwestern finalize a project-specific revegetation plan, developed in consultation with the Navajo Nation, BLM, NRCS, and BIA, that identifies measures to minimize long-term impacts on vegetation resulting from construction of the project, including actions to minimize the establishment or spread of noxious weeds. Transwestern shall file this Plan with the Secretary, along with evidence of consultation with the listed agencies, for review and written approval by the Director of OEP prior to construction.
13. Before the initiation of surveys, Transwestern shall consult with the FWS (and, in the case of cross-listed species, with the appropriate resource agency) to verify required survey methods and timing. If facilities are not constructed within 1 year from the date of issuance of a FERC certificate, Transwestern shall contact the FWS to update the species list and to determine if additional surveys are required. Survey reports and any FWS or other agency comments on the surveys and their conclusions shall be filed with the Secretary. Survey reports shall include the following information:
 - a. name(s) and qualifications of the person(s) conducting the survey;
 - b. method(s) used to conduct the survey;
 - c. date(s) of the survey;
 - d. area surveyed (including the mileposts surveyed); and
 - e. proposed mitigation that would substantially minimize or avoid potential impacts

Transwestern shall not begin construction activities until:

- a. FERC staff receives comments from the FWS regarding the proposed action;
 - b. FERC staff completes formal consultation with the FWS, if required; and
 - c. Transwestern has received written notification from the Director of OEP that construction or use of mitigation may begin.
14. Transwestern shall file a noise survey with the Secretary no later than 60 days after placing the modified Bloomfield Compressor Station in service. If the noise attributable to the operation of the station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Transwestern shall install additional noise controls to meet that level within 1 year of the in-service date. Transwestern shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.
15. Transwestern shall file a noise survey with the Secretary no later than 60 days after placing the modified Gallup Compressor Station in service. If the noise attributable to the operation of the station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Transwestern shall install additional noise controls to meet that level within 1 year of the in-service date. Transwestern shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.